



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/674,996	11/02/2000	William Edward James	25529-02	1327

7590

02/19/2003

John B Hardaway III  
P O Box 10107  
Greenville, SC 29603

EXAMINER

NGUYEN, TAM M

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 02/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/674,996

Applicant(s)

JAMES, WILLIAM EDWARD

Examiner

Tam Nguyen

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 4,6-8 and 10-13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,9 and 14-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election without traverse of species B in Paper No. 6 is acknowledged. Claims 4, 6-8, and 10-13 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 6.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3, 5, 6, 9, and 14-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

2. Regarding claim 1, it is not clear which component of the exerciser is the "means for detecting the user's end of stride foot action." Examiner will assume that the spring dampers (14,15) are the means for detection to expedite the prosecution (see Figs. 1 & 2).
3. Regarding claim 14, it is not clear which component of the exerciser is the "foot pedal braking means to brake forward motion of said foot pedal..." The specification discloses a method for stopping the foot pedals, not a separate component for stopping the forward motion of the pedals (see Page 16, lines 4-8).
4. Claims 2, 3, 5, 6, 9 and 14-16 are rejected for being dependent on a rejected base claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1, 2, 5, 6, 15 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Rodgers, Jr. (5,989,163).

5. Regarding claim 1, Rodgers discloses an exerciser comprising foot pedals (104), support means (102) for guiding said foot pedals, means (204) for detecting the user's end of stride, and means (112) for returning said foot pedals to a forward position (see Figs. 1,2, 5 and 6 & Col. 4, line 63 - Col. 5, line 8).

6. Regarding claim 2, Rodgers discloses an exerciser as described above (see discussion of claim 1). Rodgers further discloses that the detecting means detects the user's step-down on one of said foot pedals and return means returns the other foot pedal to a forward position (see Col. 4, line 63 - Col. 5, line 8).

7. Regarding claim 5, Rodgers discloses an exerciser as described above (see discussion of claim 1). Rodgers further discloses an exerciser as substantially claimed (see Col. 4, line 63 - Col. 5, line 8).

8. Regarding claim 6, Rodgers discloses an exerciser as described above (see discussion of claim 1). Rodgers further discloses speed regulating means (106) to control rearward motion of said foot pedals (see Fig. 5).

Art Unit: 3764

9. Regarding claim 15, Rodgers discloses an exerciser as described above (see discussion of claim 1). Rodgers further discloses cushioning means (204) as substantially described (see Fig. 5).

10. Regarding claim 16, Rodgers discloses an exerciser as described above (see discussion of claim 1). Rodgers further discloses a pedal arresting means and energy conversion and storage means (106) as substantially claimed (see Fig. 1).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam Nguyen whose telephone number is 703-305-0784. The examiner can normally be reached on M-F 9-5.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

\*\*\*

February 7, 2003



**NICHOLAS D. LUCCHESI**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 3700**